

April 16, 2012

From: Faculty Review Committee by Kathleen Ohman, current chair

To: Faculty Senate

Cc: Gregg Kvistad, Provost

This report is submitted in accord with the charge set forth in the Senate Constitution that the FRC report at the close of the academic year “on the process of its deliberations and . . . on any significant general findings to the Personnel Committee of the Senate.”

During the current academic year, the FRC heard only one case, a grievance filed under the Employee Grievance Process. That grievance and the FRC response to it have been well-publicized and will not be addressed specifically in this report.

#### The responsibility of the Faculty Review Committee (FRC)

The FRC is referenced in three University documents: the Senate Constitution; the APT; and the Employee Grievance Process.

1. According to the Constitution, the FRC “shall consider for review, investigation, evaluation and report, three kinds of complaints by faculty members:
  - a) Grievances respecting faculty status, working conditions, and appointments;
  - b) Grievances respecting salary allocations, providing that a pattern of inequity extending over at least a two-year period is alleged; and
  - c) Grievances respecting reappointment, promotion, tenure or dismissal, if the Provost has recommended in the negative and the appellant alleges lack of adequate consideration or violation of academic freedom.”
2. The words in the Constitution are echoed in the APT, which states that when the Provost recommends in the negative applications for reappointment, promotion, or tenure, “the Provost shall notify the candidate of his or her right to appeal to the FRC . . . on grounds of lack of ‘adequate consideration’ or on grounds of violation of academic freedom.”
3. According to the Employee Grievance Process, a grievant who is a member of the faculty “may solicit, at his or her discretion, the determination of the FRC before submitting an appeal of the respondent’s supervisor.”

Some of the points listed below relate to inconsistencies between these documents, and we urge attention be directed to these inconsistencies.

### General findings

The consideration of the one case referenced above and discussion related to it as well as cases which some members of the FRC addressed in past years resulted in the points presented below. The current members of the FRC have not reached consensus on all points, and this has been noted.

The Constitution does not charge the FRC with making recommendations, and thus this report offers none. Some recommendations, however, are implicit in the points that follow.

1. (Point of consensus). The primary concern among FRC members is the question of what, if any, impact the FRC has. Over the past six years, the FRC has considered a number of complaints and issued findings related to these complaints. Never has it been informed of the ultimate outcome of the complaints or what, if any, changes have been made in policy or procedure based on recommendations it has offered. We recognize that our recommendations may not be accepted by University administration, but just as we have never been informed of those that have been accepted, we have never been informed of those that have been rejected. As one member of the FRC asked, "If there were no FRC, would it make a difference?" Others stated: "It might be a good idea if the Provost's office could officially bring us into the loop from time to time to let us know how/if our work has made a difference." "I'd like to have the Provost meet with the committee after the findings of the committee reach his desk. I find it frustrating that we advise, he decides, and we have no idea why our recommendations seemingly made no effect on the outcome." "Would it be reasonable to expect the Provost to explain to the FRC why its conclusions were or were not accepted? The Provost has to make the final decision, but [our] conclusions should not be met by silence."
2. (Point of consensus). The 2010 revisions to the Senate Constitution state the Provost's appointee will serve as chair. While, before these revisions, the FRC has generally elected the Provost's appointee as chair, this has not been a foregone conclusion. And while the chair has acted independently of the Provost, the designation of the Provost's appointee as chair may give the appearance that the FRC is created to do the Provost's bidding.
3. (Point of consensus, but probably of more relevance to the chair). Grievances may be filed at any time. In past years, what has been most common are grievances related to denial of promotion and/or tenure, and these grievances are filed at the end of the academic year. With expansion of the FRC membership under the 2010 revisions to the Senate Constitution, constituting a quorum has been easier, but this remains problematic given that most faculty members are on 9 month appointment. Moreover, units have been very slow in reporting elections to the Senate Office, making it difficult to know who is a member of the FRC and thus to have an organizing meeting by the end of May, as the Constitution requires, or constituting a quorum during the summer.

4. (Point of some disagreement). Questions were raised among FRC members in terms of the scope of its inquiry in the case it addressed this year. In this case, the majority of the FRC chose to rest on questions of fair procedures and not to then address questions of academic freedom. One member – and there may be more who believe this – argued the FRC should have completed a more thorough investigation of complaints related to academic freedom. This may be.

There are two issues of relevance to the question of whether the FRC can investigate any complaint as thoroughly as might be warranted.

a.) The time frames within which the FRC is charged to render a decision. While the Constitution sets forth no time requirements, APT requires a written report to the Provost and candidate “within thirty days of receipt of a written appeal,” and the Grievance Process requires a “determination to the grievant and respondent within 20 working days of receipt of the grievance.”

b.) Other responsibilities of FRC members and lack of staff support for the FRC. All members of the FRC are members of the faculty with many obligations, and the FRC has no staff support. Requesting and distributing documents, scheduling interviews in a timely way, and then allowing time for discussion and crafting a written response is difficult at best, especially considering the time constraints stated above.

5. (Point of some disagreement). Questions were raised among FRC members about recusal from a case in which they have had prior involvement. The current members of FRC have no consensus around what degree of prior involvement merits recusal, at what point in the process this should occur if it does, and whether there should be policy around this or remain a matter of personal conscience.

6. (Point of consensus). Dependent on the document governing the FRC review, the audience for the FRC report differs. These differences in audience may be problematic for the parties to any complaint or grievance, give rise to perceptions of unfairness, and diminish accountability for any response to FRC findings or recommendations. Below are the inconsistencies we have noted.

a.) Most problematic is the fact that the Constitution states that the FRC findings “shall be reported to the immediate administrative supervisor of the complainant, to the appropriate dean, and to the Provost.” There is no mention of reporting to the complainant.

b.) The APT requires the FRC to “make a written report to the Provost and to the candidate,” but it goes on to state that the FRC “shall notify the faculty member and the individuals or committees involved such ways in which the reappointment/promotion/tenure-decision process failed to give adequate consideration, or violated academic freedom.”

c.) The Employee Grievance Process requires report to the grievant and the respondent but no one else.

Note: The following two items have been raised by one or more current members of the FRC, but they have not been discussed by the membership. They thus include no implicit recommendations and remain for further discussion.

7. (Point for discussion). This matter relates to the internal process of the FRC. The custom of the FRC in at least the past six years in individual cases has been for the chair to draft a report and circulate it to all members for review and suggested revisions. Suggestions are then incorporated and a final draft is circulated to the FRC membership before it is filed according to the requirements stated above. The final report notes the number of members who have endorsed it, dissented from it, or abstained. At least one member of the FRC has argued that FRC practices should make it clear that members may file, along with the majority report, a dissenting or supplementary report that is also circulated to the FRC membership before the final report is submitted, giving members the opportunity to endorse it. There is nothing to preclude this, but the time frames within which the FRC is required to review a case and submit a report make such dialog, while desired, problematic.

8. (Point for discussion). The APT states in section 7.4.2 that the FRC, in its report on a specific case, “shall not recommend for or against reappointment/promotion/tenure, but shall limit itself to questions of “adequate consideration” or violation of academic freedom. The Constitution states in section 6.A.3.b that the FRC, in reporting to the administration, “shall report severally on the validity of each individual complaint and **may recommend remedies either for procedural inadequacies or for inadequacies or injustices.**” Is a recommendation for reappointment/promotion/tenure within the scope of FRC authority as a remedy?